IN THE
SUPREME COURT OF THE UNITED STATES

NO. 75-1392

In re the Marriage of WELCH

MERLIN C. WELCH,

Petitioner,

vs.

JOYCE J. WELCH

aka JOYCE J. CONFER,

Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

to the Court of Appeal – State of California
Fourth Appellate District, Division Two.

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to the Court of Appeal - State of California
Fourth Appellate District, Division Two.

JOYCE J. WELCH, nka JOYCE J. CONFER, hereinafter referred to as "Respondent", respectfully opposes the Petition for a Writ of Certiorari to view the judgment and opinion of the Court of Appeal, Fourth District, Second Division, State of California, entered in this proceeding on November 19, 1975.

THE OPINIONS BELOW

The Opinion of the Court of Appeal, Fourth District, Second Division, of the State of California, not to be published in Official Records, appears as Appendix A, infra., p.8. Further, Petition for Re-hearing was denied by the Court of Appeal, State of California, Fourth Appellate District, Division Two, on December 15, 1975 (Appendix B, infra., p.vii and by the Supreme Court of the State of

California, on January 14, 1976 (Appendix C, infra., p.viii).

ISSUES PRESENTED

1. Petitioner's appeal from denials of his Motion to Vacate Judgment and to Quash a Writ of Execution entered against his real property should be denied, since said Writ of Execution was obtained and issued in conformity with California's statutory scheme of enforcement as codified in California Code of Civil Procedure, Section 674.5 and California Code of Civil Procedure, Section 681.

2. The lien of real property procedure provided in California Code of Civil Procedure, Section 674.5, does not constitute a "taking" of property as contemplated by the Constitution of the United

States, Amendments V and XIV, Section 1.

3. The Petitioner herein has not been denied due process as a result of the Respondent having obtained a lien upon the real property of Petitioner for child support arrearages.

APPLICABLE STATUTORY PROVISIONS

California Civil Code Section 4809.

"Modification of judgment, order or decree; service of notice. After the entry of a final judgment decreeing the dissolution of the marriage or the legal separation of the parties, or after a declaration of void or voidable marriage, or after a permanent order in any other proceeding in which there was at issue the custody, support, maintenance, or education of a minor child, no modification of such judgment, order, or decree, and no subsequent order in such proceedings shall be valid unless any prior notice otherwise required to be given to a party to the proceeding be served, in such manner as such notice is otherwise permitted by law to be served, upon the party himself. For such purpose, service upon the attorney of record shall not be sufficient.

(Added by Stats.1969, c.1698, p.3336, Section 8, operative Jan. 1, 1970.)"

California Code of Civil Procedure Section 674.5.

"A certified copy of any judgment or order of the superior court of this State for alimony or child support, when recorded with the recorder of any county, shall from such recording become a lien upon all real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterwards and before the lien expires, acquire, for the respective amounts and installments as they mature (but shall not become a lien for any sum or sums prior to the date they severally become due and payable) which lien shall have, to the extent herein provided and for the period of 10 years from such recording, the same force, effect and priority as the lien created by recordation of an abstract of a money judgment pursuant to Section 674.

"The certificate of the judgment debtor, certified by him under penalty of perjury, that all amounts and installments which have matured under said judgment prior to the date of such certificate have been fully paid and satisfied shall, when acknowledged and recorded, be prima facie evidence of such payment and satisfaction and conclusive in favor of any person dealing in good faith and for a valuable consideration with the judgment debtor or his successors in interest.

"Whenever a certified copy of any judgment or order of the superior court for alimony or child support has been recorded with the recorder of any county, the expiration or satisfaction thereof made in the manner of an acknowledgment of a conveyance of real property may be recorded.

(Added Stats.1959, c.2087, p.4819, Section 1.)"

California Code of Civil Procedure Section 675.

"Satisfaction of Judgment. (a) Form; acknowledgment; entry.

"(a) Satisfaction of a judgment may be entered upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk or with the judge, if there be no clerk, which may recite payment of the judgment in full or the acceptance by the judgment creditor of any lesser sum in full satisfaction thereof, made in the manner of any acknowledgement of a conveyance of real property, by the judgment creditor or assignee of record, or by endorsement by judgment creditor or assignees of record on the face, or on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgment, or make such endorsement, and, upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

"In the superior court and in the municipal courts such entry shall be made in the register of actions; in justice courts, in the docket in the justice court."

California Code of Civil Precedure Section 681.

"Time for issuance; exclusion of time stayed or enjoined. The party in whose favor judgment is given may, at any time within 10 years after the entry thereof, have a writ or order issued for the execution or enforcement of the judgment. If, after the entry of the judgment, the issuing of such writ or order is stayed or enjoined by any judgment or order of court, or by operation of law, the time during which it is so stayed or enjoined must be excluded from the computation of the 10 years within which execution or order may issue. (As amended Stats. 1955, c.754, p.1248, Section 1.)"

California Code of Civil Procedure Section 685.

"Execution after ten years; leave of court, procedure; judgment upon supplemental proceedings. In all cases the judgment may be enforced or carried into execution after the lapse of 10 years from the date of its entry, by leave of the court, upon motion, and after due notice to the judgment debtor accompanied by an affidavit or affidavits setting forth the reasons for failure to proceed in compliance with the provisions of discretion of the court, be sufficient, shall be ground

for the denial of the motion. This section does not limit the jurisdiction of the court to order issuance of such writ prior to the lapse of said 10-year period in cases where the party in whose favor judgment is given is not entitled to a writ under Section 681 of this code.

"Judgment in all cases may also be enforced or carried into execution after the lapse of 10 years from the date of its entry, by judment for that purpose founded upon supplemental proceedings; but nothing in this section shall be construed to revive a judgment for the recovery of money which shall have been barred by limitation at the time of the passage of this act. (As amended Stats. 155, c.754, p.1248, Section 2; Stats. 1957, c.910, p.2120, Section 1.)"

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment V:

"No person shall . . . be deprived of life, liberty or property, without due process of law . . . "

Constitution of the United States, Amendment XIV, Section 1:

". . . nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner and Respondent were divorced by final judgment of divorce entered on December 2, 1963 in Superior Court in and for the County of Orange, State of California, Case No. 91139. Various provisions for child support, maintenance, and education were ordered as incorporated by reference into said final judgment of divorce, partially based upon a certain property settlement agreement (see Appendix D, page xiv). Thereafter, certain modification orders were duly entered in said case.

On November 14, 1973, pursuant to applicable California authority therefor, Respondent made ex parte application to the Orange County Superior Court for issuance of a writ of execution against Petitioner in the sum of $17,558.59, said sum representing child support payment arrearages as of that date.

Thereafter, pursuant to California Code of Civil Procedure, Section 674.5, Respondent liened the real property of Petitioner herein in the County of Contra Costa, State of California.

Petitioner then moved to vacate judgment and quash said writ of execution in Case No. 11939 which, after an order of consolidation of Case Nos. 11939 and 187511, were denied by Judge James H. Walsworth by order of June 24, 1974, entered in the Superior Court in and for the County of Orange, State of California.

Said order upon consolidated cases was affirmed by the opinion of the Court of Appeals, Fourth District, Second Division, State of California (unpublished) filed on November 19, 1975 (Appendix A, page i). Petition for rehearing was denied by said Court of Appeal on December 15, 1975 (See Appendix B, page ii) and by

California State Supreme Court on January 14, 1976. (See Appendix D, page xix.)

ARGUMENT

I

CALIFORNIA'S STATUTORY SCHEME FOR THE SECURING OF AN EX PARTE WRIT OF EXECUTION FOR CHILD SUPPORT ARREARAGES IS NOT VIOLATIVE OF PROCEDURAL DUE PROCESS OF LAW.

The determination of whether or not Petitioner herein was afforded procedural due process of law in connection with the ex parte issuance of a writ of execution requires an examination not only of the general statutory authorization therefor, California Code of Civil Procedure Section 681, but additionally requires an examination of the procedural safeguards afforded to California judgment debtors similarly situated to the Petitioner herein.

Initially, Petitioner candidly notes that California Code of Civil Procedure,

Section 681, generally provides for the securing of a writ of execution ex parte upon a valid judgment.

> "Time for issuance; exclusion of time stayed or enjoined. The party in whose favor judgment is given may, at any time within 10 years after the entry thereof, have a writ or order issued for the execution or enforcement of the judgment. If, after the entry of the judgment, the issuing of such writ or order is stayed or enjoined by any judgment or order of court, or by operation of law, the time during which it is so stayed or enjoined must be excluded from the computation of the 10 years within which execution or order may issue. (As amended Stats. 1955, c.754, p. 1248, Section 1.)"

In a series of well-reasoned cases, the California Supreme Court applied this principle to obligations of parties arising from divorce decrees. See for example:

Lohman vs. Lohman (1946) 29 Cal.2d 144, 173 P.2d 657.

Wolfe vs. Wolfe (1947) 30 Cal.2d 1, 180 P.2d 345.

DiCorpo vs. DiCorpo 33 Cal.2d 195-201, 200 P.2d 529.

DiMarco vs. DiMarco (1963) 60 Cal.2d 387, 33 Cal.Rptr. 610.

Ostensibly, the primary concern any court would have is justifying the existence of a procedure which established the monetary obligations of a party without notice and opportunity to be heard especially, since in the case of a divorce decree similar to that of the instant case, the judgment is dynamic in that it grows with each accrual of unpaid support.

Notwithstanding this problem, however, the California courts have repeatedly protected a party's application for an ex parte writ of execution upon a divorce decree.

Bryan vs. Bryan (1958) 161 Cal.App.2d 579, 326 P.2d 898;

Simonet vs. Simonet (1968) 263 Cal. App.2d 612, 69 Cal.Rptr. 806.

Perhaps the clearest available analysis of this problem occurred in a startling-

ly similar California case, In re the Marriage of Crookshanks (1974) 41 Cal.3d 475, 116 Cal.Rptr. 10.

As the Court of Appeal of the State of California, Fourth Appellate District, accurately enunciated in its unpublished opinion herein, the Crookshanks, supra, court rejected a constitutional attack on a writ of execution secured without notice to the debtor and accordingly reasoned that the same rationale may be applied to judgment liens pursuant to California Code of Civil Procedure, Section 674.5, which method was utilized by Respondent herein for attempted enforcement of the child support arrearages.

In Heller Properties vs. Rothschild (1970) 11 Cal.App.3d 705, 90 Cal.Rptr. 133, the court therein noted that the previous problem experienced in some of the older decisions revolving around the uncertainty

of the amount of the judgment was resolved by the enactment of a new California Code of Civil Procedure, Section 674.5 in 1959. Citing Simonet, supra, the court specifically condoned the practice of imposing a lien on real property for delinquency in the payment of child support.

Despite the obvious common thread of public policy which weaves throughout California Code of Civil Precedure Section 674.5, and the case law which provides a preferred and expedient method of executing upon a judgment for spousal and child support, the California legislature has not neglected its duty in providing the Petitioner herein with ample and adequate procedural safeguards to insure against erroneous or fraudulent issuance of a writ of execution, ex parte.

This protection is clearly illustrated by the Crookshanks, supra, court as follows:

> "Appellant seeks to avoid the inevitable consequences of the California statutory scheme by arguing that in some circumstances equitable considerations may prevent the enforcement of a valid unpaid judgment. The argument fails since the Sniadach-Randone rule requires only a prima facie and not conclusive showing as a prerequisite to the issuance of a writ. While equitable considerations may be pertinent in a motion to quash a writ of execution, the possibility that they may exist does not detract from the requisite prima facie case." Crookshanks, 41 Cal.App.3d at pp.478-479.

It is important to note, also, that Crookshanks, supra, speaks of a "statutory scheme" for the enforcement of unpaid judgments of similar nature.

> "Appellant seeks to avoid the inevitable consequences of the California statutory scheme . . . " Crookshanks, supra.

It is the "Statutory scheme" of California which must be examined in its totality, including California Code of Civil Procedure, Section 675, to determine whether or not Petitioner was denied due process of law or, rather, he failed to utilize

those safeguards which were properly afforded him as delineated above.

Petitioner conveniently fails to confront this safeguard which erodes his argument of a denial of due process by arbitrarily stating that his Constitutional rights under the Fifth and Fourteenth Amendments have been abridged. Further, he refuses to admit that the available procedural methods, if utilized, are adequate to protect his rights when balanced against the policy of the law to provide an expedient and preferred remedy for the enforcement of spousal or child support obligations as codified in California Code of Civil Procedure, Section 674.5.

II

PETITIONER HAS NOT BEEN DEPRIVED OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW.

Petitioner initiates his contention that Respondent's actions consistent with

applicable California law were violative of due process by extracting a tortured interpretation of California Civil Code, Section 4809, which Petitioner suggests requires notice of the issuance of a writ of execution. The absence of authority for that proposition either in the language of California Civil Code, Section 4809 itself or cases dealing therewith, render the Petitioner's interpretation totally unfounded. Rather, California Civil Code, Section 4809 deals specifically with modification of existing divorce orders.

Petitioner argues In re Gabriel 50 Cal.App.3d 556, in partial support of this position. However, as the Court of Appeal, State of California, Fourth District, accurately pointed out in its opinion herein, Gabriel specifically "held that a writ of execution can be obtained ex parte. Gabriel

dealt with noticing an action for arrearages. The only such action is wife's case no. 187511 which was consolidated with husband's motion to quash the writ of execution heard on the same date. The husband appeared generally. There was no motion to quash service so any error re service of process is deemed waived. Additionally, it is not apparent that the defendant is challenging the service of process in case no. 187511 which was the case in which the court granted judgment for unpaid spousal and child support." Accordingly, Gabriel has little if any, bearing on the issues presented herein.

Apparently extending from his understanding of California Civil Code Section 4809, Petitioner next contends that the distinction between California Code of Civil Procedure 681 and California Code of Civil Procedure 685 relative to notice

for the issuance of a writ of execution is "Arbitrary, capricious and discriminatory".

To the contrary, a distinction is clearly based upon the age of a judgment being enforced depending upon whether more or less than ten years have passed from the date of its final entry.

Respondent contends that the ten year limitation found in California Code of Civil Procedure, Section 681, is nothing more than a statute of limitations upon the enforcement of a judgment.

> "Statutes of limitation are vital to the welfare of society, and are favored in the law. They are found and approved in all systems of enlightened jurisprudence; they promote repose by giving security and stability to human affairs; important public policy lies at their foundation; they stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary." Shain vs. Sresovish (1894) 104 Cal. 402, 38 P. 51.

Historically, California Code of Civil Procedure, Section 681, was amended in 1955 to extend from five to ten years the statute of limitations for actions upon final judgment. Commencing upon this change, the California Supreme Court in the case of Angeli vs. Lischeti, 374 P.2d 812, 24 Cal. Rptr. 849 states as follows:

> "It is our view that the subject legislation (i.e. the 1955 amendment to Section 681) is procedural and remedial in character and purpose. A statute making procedural changes in the manner of enforcing a valid judgment is purely remedial to an existing status."

Accordingly, California Cide of Civil Procedure, Section 681 and Section 685, seem simply designed to define a time limit until which a writ of execution is available to a judgment creditor as a matter of right as opposed to being dependent upon the court's discretion.

III

PETITIONER WAS AFFORDED AND EXERCISED HIS RIGHT TO PRESENT EQUITABLE CONSIDERATIONS.

It is important to note that at pages 12 and 13 of the Petition for Writ of Certiorari filed herein, Petitioner admits that "under present California procedure, an issuance of an ex parte writ of execution in a domestic case subsequent to final judgment is denied initially only where satisfaction of the obligation is shown on the face of the record". However, Petitioner goes on to argue that "this practice fails to consider the unusual nature of most domestic decrees which, unlike money judgments for sums certain, may require adjustments if any of the following circumstances other than payment have occurred, to wit (1) the child or children for whose support a writ of execution has been issued is dead; (2) the child or children for whose

support a writ of execution has been issued has been earlier emancipated; (3) that the circumstances have so changed as to justify a reduction of support other than the amount which appears in the original judgment or elimination of support entirely (as in the case where the child or children do not live with the parent awarded custody and concurrent support.)"

Admittedly, the three aforementioned fact situations are not unusual to matters relating to familial affairs and, as such, are foreseeable and should be reconcilable with the statutory scheme of any given jurisdiction. California's statutory scheme clearly meets the requirements.

Notwithstanding this fact, however, it appears that instantly, as did the appellant in Crookshanks, supra, the Petitioner "seeks to avoid the inevitable consequences of the California statutory

scheme by arguing that in some circumstances equitable considerations may prevent the enforcement of a valid unpaid judgment. The argument fails since the Sniadach ([1969] 395 U.S. 337, 89 S.Ct. 1820) -- Randone ([1971] 5 Cal.3d 536, 96 Cal.Rptr. 709) rule requires only a prima facie and not a conclusive showing as a prerequisite to the issuance of a writ. While equitable considerations may be pertinent in a motion to quash a writ of execution, the possibility that they may exist does not detract from the requisite prima facie case". (Emphasis added)

Presently, Respondent made a prima facie showing of child support arrearages in conformity with the Sniadach-Randone rule. Next, she obtained a writ of execution based thereon. She then secured a judgment lien pursuant to California Code of Civil Procedure, Section 674.5, upon

Petitioner's real property in Contra Costa County.

Thereafter, upon receipt of notice of this action on December 27, 1973, Petitioner exercised his right and failed in his attempt to demonstrate equitable considerations which would possibly relieve him of liability for the sums set forth in the writ of execution. (See Appendix E, p.xxii)

Finally, in addition to the opportunity for hearing which was granted to Petitioner herein, it is interesting to note that the nature of the property right which was being secured by Respondent at the time of hearing may well not have constituted a "taking" as defined by the Sniadach-Randone decisions:

> "Because the attachment of real estate does not generally deprive an owner of the use of his property, but merely constitutes a lien on the property, the 'taking' generated by such attachment is frequently less severe than

that arising from other attachments. In view of this basic difference in the effect of such attachment, it has been suggested that a statute which dealt solely with the attachment of real estate might possibly involve constitutional considerations of a different magnitude than those discussed hereafter." Randone, supra,

Consistent with this logic, California Code of Civil Procedure, Section 674.5, involves exclusively the imposition of a lien on real property.

CONCLUSION

Based upon the foregoing arguments and authorities, Respondent respectfully submits that this Court should deny the Petition for Writ of Certiorari in view of the fact that present state law in California is consistent with the requirements of due process of law. Further, Respondent requests that attorneys' fees and costs on appeal be awarded.

DATED: Chino, California
July 14, 1976.

Respectfully submitted,

WILLIAM J. McVITTIE
McVittie, Gutierrez
& Bidart
Attorneys for Respondent.

(Appendices Follow)

APPENDIX A

NOT TO BE PUBLISHED IN OFFICIAL REPORTS
COURT OF APPEAL, FOURTH DISTRICT

SECOND DIVISION

STATE OF CALIFORNIA

In re the Marriage of JOYCE J. WELCH and MERLIN C. WELCH.	
JOYCE J. WELCH, aka JOYCE J. CONFER, Respondent, vs. MERLIN C. WELCH, Appellant.	4 Civil 13949 (Sup.Ct.99139) O P I N I O N

APPEAL from the Superior Court of Orange County. James H. Walsworth, Judge. Affirmed.

Sara M. Lake, Contra Costa Legal Services Foundation, for Appellant.

Law Offices of William J. McVittie, by Michael J. Bidart, for Respondent.

In a brief notable for its lack of professional objectivity,[1] its references to matters outside the record[2]

1/ Three judges of the superior court are charged with malfeasance in office, a prior attorney is accused of incompetency, and opposing counsel is accused of joining with his client in a conspiracy of fraud and deceit.

* * *

2/ For example, "Husband was unable to pay the 1,000-3,000 in retainer fees required by the experienced attorneys he had contacted. . ." "Curtis (prior attorney). . .directly counter to husband's case. . ." "At that point in the hearing

and its convenient overlooking of pertinent authority, counsel for appellant attacks the denial of a motion to quash a writ of execution and an order granting judgment against appellant for unpaid spousal and child support. While every litigant is entitled to a vigorous presentation of his case, shrill invectives seldom substitute for professional competence.

Appellant, hereafter husband, and respondent, hereafter wife, were divorced in 1961. A property settlement agreement was approved and incorporated into the decree. By its provisions, each party took custody of two of the four children. A later modification resulted in the wife receiving custody of all four children and a reduction in the amount to be paid to her by the husband. In 1973, wife secured a writ of execution for unpaid installments on the modified order for support. In 1974, husband filed a motion to vacate the judgment and to quash the writ of execution. That motion was denied, and this appeal followed.[3/]

Husband first attacks the constitutionality of Code Civil Procedure, § 674.5, which provides for a lien on a former spouse's property, and of Code Civil Procedure, § 681, which

(fn.2 cont.) husband's gesture of disapproval was beginning to disrupt the proceedings. . ." None of these allegations find any support in the record.

* * * * * * * *

3/ In addition to this appeal, husband has been before this court on two occasions. (1) On April 16, 1974, husband filed a petition for writ of certiorari to forestall enforcement of a municipal court order for child support, following a plea of guilty to Penal Code, § 270. A petition for hearing was denied by the Supreme Court in this case. (2) On June 7, 1974, husband filed a petition for writ of mandate in this court, presenting the same issues involved in the instant case and asking this court to quash the writ of execution, to direct the indictment of wife and her attorney and also asking for damages in the sum of $310,000. Both writs were denied as was a hearing in the Supreme Court on the petition for writ of certiorari.

provides for a writ of execution on a judgment on the ground that these sections fail to provide for a notice to the opposing party. Neither section provides for any such notice. In ten pages of discussion of the principles of such cases as Sniadach v. Family Finance Corp., 395 U.S. 337; Griffin v. Griffin, 327 U.S. 220; and Randone v. Appellate Department, 5 Cal. 3d 536, husband's counsel simply ignores the case of In re Marriage of Crookshanks, 41 Cal. App. 3d 475 (hearing denied) which rejected a constitutional attack on a writ of execution secured without notice. The same rationale may be applied to judgment liens. The statement in Crookshanks that a judgment debtor can protect himself by recording payments is equally applicable to Code of Civil Procedure, § 674.5. (See Witkin, Calif.Proc., Judgments, § 140, p. 3287.) It should be added that a lien on real property, particularly on non-exempt real property, is probably not a deprivation. (See footnote 4 of Randone, supra.) We adopt the rationale and reasoning of Crookshanks and feel no compulsion to comment further on this subject.

Husband contends that In re Marriage of Gabriel, 50 Cal.App. 3d 556, renders the securing of the writ of execution illegal. To the contrary, Gabriel specifically held that a writ of execution can be obtained ex parte. Gabriel dealt with notice in an action for arrearages. The only such action here is wife's case No.187511 which was consolidated with the husband's motion to quash the writ of execution and heard on the same date. The husband appeared generally. There was no motion to quash service so any error re service of process is deemed waived. Additionally, it does not appear that the defendant is challenging the service of process in case No.187551 which was the case in which the court granted judgment for unpaid spousal and child support.

Husband next contends that the issue of the writ of execution by Judge Flynn was in some way constitutionally defective since Judge Flynn had been in 1961 a member of a law firm which represented the wife. Again, counsel ignores the provision of Code Civil Procedure, § 170(4), which provides that a disqualification based on employment or relationship with a client must occur within two years prior to the action complained of. Here, ten years had elapsed.

Husband next contends that it was an abuse of discretion for Judge Flynn to issue the writ since it had been rejected by another judge. Granting, for the sake of argument and brevity, that it was improper to present the matter to one judge after another judge had taken no action on it, this does not divest the subsequent judge of jurisdiction. Under Code Civil Procedure, § 1008, an order made under such circumstances may be set aside. However, this does not divest the court of jurisdiction and there is certainly no showing of any abuse of discretion on the part of Judge Flynn when he issued the writ.

Defendant next contends that the provisions of the property settlement agreement are res judicata and forbid the execution. In the first place the clause relied on -- "Each of the parties hereto agree. . .not to interfere in the use, ownership, enjoyment or disposition of any property now owned or hereafter acquired by the other" -- cannot be tortured into a prohibition against legal resort to property to force compliance with the contract or with the court order. The contract itself

provided that the provisions for alimony and child support were separable from the rest of the agreement. In the second place, the parties had modified the original agreement which modification had had court approval and had been reduced to a new and additional order.

Husband next contends that there was an oral agreement between the parties, reduced to a stipulation, which changed the amount of child support. The existence of such an agreement was not presented at the trial level. If such an agreement existed, it should have been presented to the trial court for a ruling.

Husband next contends that the court erred in refusing to accept for filing a document entitled "Motion for Costs and Damages." This is a rambling attack on wife and wife's attorney charging them with a conspiracy to wreck and ruin the husband's health and his financial well being. In it husband alleged that they should be charged with various criminal offenses and asked the court to cause an investigation of them and to have charges brought. There was clearly no error committed by the trial court in refusing to give judicial recognition to this document. The charge against Judge Oliver of a violation of the Canons of Judicial Ethics for refusal to accept this document is entirely unfounded.

Husband next charges that the attorney who represented him at the hearing under attack was guilty of professional incompetence. If he was, the record certainly does not disclose it. Also, without support in the record, is the charge that Judge Walsworth, who heard the motion appealed from, refused

to consider the matter and denied the husband a hearing. Husband was in court with counsel; the matter was argued, was submitted on the record; points and authorities were submitted, and the judge ruled. As indicated in footnote 2, allegations of husband's dissatisfaction with his then attorney are outside the record.

Husband next charges Judge Walsworth with violation of Government Code, § 68021, in not making a ruling on the motion within 90 days. Again, assuming for the purpose of brevity that this charge is true, it in no way divested Judge Walsworth of jurisdiction on the motion.

Husband's last contention is that Judge Walsworth committed reversible error in denying his request for findings of fact and conclusions of law.

No findings are required on an order made after the granting or denial of a motion. (Pasadena Medi-Center Associates v. Superior Court, 9 Cal. 3d 773, 779, fn. 6; Davis v. Davis, 41 Cal. 2d 563; Waller v. Weston, 125 Cal. 201; Kallman v. Henderson, 234 Cal.App. 2d 91; Mathewson v. Mathewson, 207 Cal.App. 2d 532; Wood v. Peterson Farms Co., 132 Cal.App. 233; David v. Goodman, 114 Cal.App. 2d 571; Perez v. Perez, 111 Cal.App. 2d 827.) "The universal practice in this state is not to require findings on an order made after motion. (Citation.)" (Waymire v. California Trona Co., 176 Cal. 395, 399-400.)

Judgment affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ Gardner
P.J.

We concur:

/s/ Kerrigan
J.

/s/ Tamura
J.

APPENDIX B

COURT OF APPEAL—STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

IN RE THE MARRIAGE OF JOYCE J. and MERLIN C. WELCH

vs.

ET

4 Civ. NO. 13949

COUNTY NO. 9139

BY THE COURT:

The petition for rehearing is DENIED.

Gardner, P.J.

P.J.

Copies to:
County Clerk, County of Orange, Courthouse, Santa Ana, 92701
William J. Mevittie, 12616 Central Ave., Chino, 92710
Merlin C. Welch, 444 Monti Circle, Pleasant Hill, 94523

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APPENDIX C

PROPERTY SETTLEMENT AGREEMENT

THIS AGREEMENT, Made this 3rd day of October, 1961, between JOYCE J. WELCH, hereinafter referred to as "Wife", and MERLIN C. WELCH, hereinafter referred to as "Husband";

W I T N E S S E T H:

The parties hereto are husband and wife and have separated and desire by this agreement to finally determine their property and other rights and agree to the custody of THOMAS E. WELCH, TIMOTHY E. WELCH, GAY E. WELCH and TERELL O. WELCH, and that this agreement is entered into on the basis of the following facts:

a. The parties hereto were married in Biloxi, Mississippi, on November 13, 1949, and ever since have been and still are husband and wife;

b. The parties have four (4) children, the issue of said marriage, to wit: THOMAS E. WELCH, age 10 years, TIMOTHY E. WELCH, age 7 years, GAY E. WELCH, age 6 years, and TERELL O. WELCH, age 4 years;

c. Differences have arisen between Husband and Wife, as a result of which they have decided to separate and hereafter permanently live apart, and become divorced;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, IT IS MUTUALLY AGREED:

1. That both of the parties have made a full and fair disclosure each to the other of all of the real and personal property belonging to the parties, and the parties' debts and encumbrances, and that each such disclosure is a part of the consideration for entering into this agreement. All disclosed

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property of any significant value is specifically dealt with in this agreement. The properties jointly and severally owned by the parties hereto are as follows:

a. Furniture and fixtures now located in the apartment occupied by Wife; and

b. A 1960 Ford Station Wagon, which is encumbered to the extent of $2,300.00;

c. Personal effects in possession of Wife;

d. Personal effects in possession of Husband.

2. ASSIGNMENTS TO WIFE. Husband hereby sells, assigns and transfers unto Wife all of his right and interest in and to the following items of property:

a. Furniture and furnishings now located in the apartment presently occupied by Wife;

b. The 1960 Ford Station Wagon;

c. Personal effects in possession of Wife.

3. ASSIGNMENTS TO HUSBAND. Wife hereby sells, assigns and transfers unto Husband all of her right and interest in and to the following items of property:

a. Personal effects in possession of Husband.

4. INSURANCE. Husband and Wife agree that Husband shall maintain that medical and health insurance now held by virtue of a group policy in connection with his employment for the benefit of the four minor children of the parties hereto; or, in the event of change of employment, shall obtain and maintain a comparable type of medical and health insurance for said children.

5. FUTURE ACQUISITIONS. From the date hereof and henceforth all earnings and all property of whatsoever nature, whether community or separate, hereafter acquired by either of the parties hereto by gift, devise, bequest, purchase, exchange, or in any other manner, shall be, except as specifically otherwise provided in this agreement, the sole and separate property and estate of

the party who earns or acquires the same.

6. INDEMNIFICATION FOR FUTURE OBLIGATIONS. That all debts, obligations and/or liabilities of the parties hereto which arose subsequent to September 26, 1961, shall be the sole responsibility of the party incurring the same, and each agrees to hold the other harmless upon any such obligation.

7. INHERITANCE. Each party hereto does hereby waive any and all rights to inherit the estate of the other at his or her death, or take property from the other by devise or bequest (unless under a Will subsequent to the effective date hereof), or to claim any family allowance or probate homestead, or to act as Administrator or Administratrix of the estate of the other (except as a nominee of another person legally entitled to said right), or to act as Executor or Executrix under the Will of the other (unless under a Will executed subsequent to the effective date hereof).

8. INTERFERENCE. Each of the parties hereto agrees:

a. That each may follow and carry on such business, occupation, or profession as he or she may choose, without interference from the other whatsoever;

b. Not to interfere with the use, ownership, enjoyment or disposition of any property now owned or hereafter acquired by the other.

9. CUSTODY. Wife shall have the care, custody and control of THOMAS E. WELCH, age 10, and GAY E. WELCH, age 6, two of the minor children of the said parties, during their minority. That Husband shall have the care, custody and control of TIMOTHY E. WELCH, age 7, and TERELL O. WELCH, age 4, two of the minor children of the said parties, during their minority. Each of the parties shall have the right to visit with and have custody of those minor children which are in the custody of the other party at such times and places as are mutually convenient to the parties hereto.

10. SUPPORT. Husband agrees to pay Wife for the support and maintenance of the two minor children of the parties hereto in the custody of Wife the sums of $80.00 per month for each of said two minor children, making a total of $160.00 per month; which sums shall be paid in installments of $80.00 on the 1st and 15th of each and every month, commencing on October 1, 1961 and continuing thereafter until the majority of said minor children, or until further order of any Court of competent jurisdiction, or until such time as Wife is earning a sum which is reasonably comparable to Husband's basic salary, and Wife further agrees that at such time as she is experiencing earnings reasonably comparable to Husband's basic salary that Husband may cease child support payments to Wife and Wife will at no time in the future attempt to enforce or collect any child support payments which should thereafter become due, owing and unpaid by virtue of any interlocutory or final decree of divorce or modification thereof. Husband also agrees to pay any major medical and hospitalization bills for said children over and above all amounts received by way of insurance compensation.

11. ALIMONY. Husband and Wife hereby agree that Husband shall pay to Wife alimony for her support and maintenance the sum of $50.00 per month, payable in installments of $25.00 on the 1st and 15th of each and every month, commencing October 1, 1961 and continuing thereafter until the death or remarriage of Wife, or until further order of any Court of competent jurisdiction, or until such time as Wife is earning income which is reasonably comparable to Husband's basic salary; and Wife further agrees that at such time as she is earning an amount reasonably comparable to Husband's basic salary that Husband may cease all alimony payments and that Wife will not thereafter seek any alimony or support from Husband or attempt to collect or enforce any alimony or support which has become due and owing by virtue of any

interlocutory or final decree of divorce or modification thereof.

12. SEVERABILITY. Husband and Wife understand and agree that the provisions under the Paragraph entitled "CUSTODY", and under the Paragraph entitled "SUPPORT", and under the Paragraph entitled "ALIMONY" are separate and severable from the foregoing provisions relating to the division of the property of the parties and that such division is not the consideration for the support nor custody nor alimony provisions, nor are the support or custody or alimony provisions consideration for the property settlement provisions. The intention of the parties is that these three mentioned paragraphs may be made part of the Court order if and when an interlocutory decree of divorce is granted.

13. COOPERATION. Each of the parties hereto will, on demand, make, execute and deliver any and all instruments or conveyances of any kind or character that may be necessary or proper to vest in the other, or to otherwise effectuate, perform or carry out the terms and provisions of this agreement.

14. AGREEMENT BINDING UPON SUCCESSORS. That each and every covenant and agreement herein contained shall inure to the benefit of, and shall be binding upon the heirs, legatees, devisee assignees, administrators, executors and successors in interest of the parties hereto.

15. EFFECTIVE DATE. This agreement is executed on and shall be effective from and after the date first hereinabove written. In any action for divorce already pending or hereafter instituted by either party against the other, this Agreement may be submitted to the Court in such action for its approval and incorporation in any Court Decree. This agreement, however, shall not depend for its effectiveness on such approval.

16. SEVERABILITY OF TERMS. Should any part, term, or provision of this contract be by the Courts decided to be illegal or in conflict with any law of this state, the validity of the

remaining portions or provisions shall not be affected thereby.

17. PAYMENT OF OBLIGATION, WIFE TO BE HELD HARMLESS. Husband and Wife agree that Husband shall assume all payment of and hold Wife harmless for the obligation of $2,300.00 now owing on the 1960 Ford Station Wagon.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and executed this instrument on the day and year first hereinabove written.

Joyce J. Welch
JOYCE J. WELCH — Wife

Merlin C. Welch
MERLIN C. WELCH — Husband

APPROVED:
LEV & LYON
By Louis Z. Lehrlein
Attorneys for Plaintiff

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STATE OF CALIFORNIA)
(ss.
County of Orange)

On this 2nd day of October, 1961, before me, the undersigned, a Notary Public in and for the aforesaid county and state, personally appeared JOYCE J. WELCH, known to me to be one of the persons whose name is subscribed to the within instrument, and she acknowledged that she executed the same.

WITNESS my hand and official seal.

Ann Van Rynen
Notary Public in and for said county and state.

ANN VAN RYNEN
My Commission Expires August 28, 1965

STATE OF CALIFORNIA)
(ss.
County of Orange)

On this 2nd day of October, 1961, before me, the undersigned, a Notary Public in and for the aforesaid county and state, personally appeared MERLIN C. WELCH, known to me to be one of the persons whose name is subscribed to the within instrument, and he acknowledged that he executed the same.

WITNESS my hand and official seal.

Ann Van Rynen
Notary Public in and for said county and state.

ANN VAN RYNEN
My Commission Expires August 28, 1965

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LEV & LYON
ATTORNEYS AT LAW
140 WEST AMERIGE
FULLERTON, CALIFORNIA

LAmbert 5-1115

(SPACE BELOW FOR FILING STAMP ONLY)

FILED
OCT 19 1961
L. B. WALLACE, County Clerk
By [illegible] Deputy

ENTERED IN BOOK
INTERLOCUTORY JUDGMENT OF DIVORCE
No. 73 Page 465
Date OCT 20 1961

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

JOYCE J. WELCH,
Plaintiff,
-vs-
MERLIN C. WELCH,
Defendant.

Case No. 99139

INTERLOCUTORY JUDGMENT OF DIVORCE

Order to withdraw Judgment filed Nov. 16, 1961

This cause came on regularly to be heard this day before the Court, LOUIS P. HELMREICH appearing as attorney for the plaintiff, and it appearing that the defendant has appeared by written appearance on file herein and has stipulated that the action may be heard without further notice to defendant, on the default calendar or otherwise, at any date convenient to the Court; and evidence having been introduced on behalf of said plaintiff at the hearing of this cause; and said cause having been submitted to the Court for its consideration and decision;

NOW, THEREFORE, said Court, having considered the same, makes its finding of fact and decision as follows:

The Court finds that all the allegations contained in the complaint are true, and that a divorce ought to be granted as prayed for in said complaint.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff is entitled to a divorce from the defendant; that when the period prescribed by law has expired, a final judgment shall be entered

granting a divorce herein, wherein and whereby the bonds of matrimony theretofore existing between said plaintiff and the defendant shall be dissolved; and that the plaintiff shall have the care, custody and control of Thomas E. Welch, age 10, and Gay E. Welch, age 6, two of the minor children of said parties, during their minority; that defendant shall have the right to visit and to have the custody of said Thomas E. Welch and Gay E. Welch at such times and places as are mutually convenient to the parties hereto; and that the defendant shall have the care, custody and control of Timothy E. Welch, age 7, and Terell O. Welch, age 4, two of the minor children of the parties hereto, during their minority; that the plaintiff shall have the right to visit and have the custody of said minor children at such times and places as shall be mutual ly convenient to the parties hereto; that defendant shall pay to plaintiff for the support and maintenance of the minor children of the parties hereto the sum of Eighty Dollars ($80.00) per month for each of said two minor children, making a total of $160.00 per month, which shall be payable in installments of $80.00 on the 1st and 15th of each and every month, commencing on the first such date after the entry of this decree and continuing thereafter until the majority of said minor children, or until further order of any court of competent jurisdiction, or until such time as plaintiff is earning a sum which is reasonably comparable to defendant's basic salary; that defendant shall also pay any major medical and hospital bills for said minor children in the custody of plaintiff, when the amounts therefor are not compensated by way of any medical insurance carried by either of the parties hereto; defendant shall also pay to plaintiff as alimony for her support and maintenance the sum of $50.00 per month, payable in installments of $25.00 on the 1st and 15th of each and every month, commencing on the first such date after the entry of this decree and continuing thereafter until the death or remarriage of plaintiff, or until further order

of any court of competent jurisdiction, or until such time as plaintiff is earning an income which is reasonably comparable to defendant's basic salary.

Dated: October 17, 1961.

Judge of the Superior Court

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

Dept. 11

Court convened at 9:15 A M. October 16 19 61, present

Hon. L. VAN TATENHOVE, Judge; William Johnson Deputy Clerk;

Robert Lutschg Deputy Sheriff; Herbert Aasness, Reporter;

and the following proceedings were had:

99139 WELCH VS WELCH

This case came on regularly for trial. Plaintiff in court with counsel Louis Helmreich. Defendant not in court and not represented by counsel. Joyce J. Welch, Virginia Wagner and Carl Cane were sworn and testified. A Property Settlement Agreement was received and ordered filed. An Interlocutory Decree of Divorce is granted to the plaintiff. The Property Settlement Agreement is approved and all parties ordered to comply with the executory provisions therein. The Care, Custody and Control of Thomas E. and Gay E. Welch is awarded to the Plaintiff with the right of reasonable visitation reserved to the defendant. Care, Custody and control of Timothy E. and Terrell O. Welch is awarded to the defendant with the right of reasonable visitation reserved to the plaintiff. The defendant is ordered to pay to the plaintiff the sum of $20.00 per child per month for the support and maintenance of Thomas and Gay E. Welch. Defendant ordered to pay to the plaintiff for her support the sum of $50.00 per month payable at the rate of $25.00 on the first and fifteenth days of each month commencing October 1, 1961. The community property to be divided as per the property settlement agreement. EMT. 10-30-61 hjg

The above minute order is a true and correct copy of my minutes.

William Johnson, Deputy Clerk

Book 141 Page 48

Appendix D

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

I have this day filed Order

HEARING DENIED

In re: 4 Civ. *No.* 13949

Welch

vs.

Welch

Respectfully,

G. E. BISHEL
Clerk

APPENDIX E

CIVIL NO. 4 Civ. 13949 R.T. 3/28

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

JOYCE J. WELCH aka
JOYCE J. CONFER,

Plaintiff & Respondent,

vs.

MERLIN C. WELCH,

Defendant & Appellant.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE JAMES H. WALSWORTH, JUDGE PRESIDING

REPORTER'S TRANSCRIPT
ON APPEAL

A P P E A R A N C E S

FOR PLAINTIFF-RESPONDENT:

WILLIAM J. McVITTIE
Attorney at Law
12616 Central Avenue
Chino, California 91710

FOR DEFENDANT-APPELLANT:

SARA M. LAKE
Attorney at Law
105 East Fifth Street
Pittsburg, California 94565

JANET R. HIIVA
OFFICIAL COURT REPORTER
COURTHOUSE
SANTA ANA CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DEPARTMENT 2

JOYCE J. WELCH aka
JOYCE J. CONFER,

Plaintiff,

vs.

MERLIN C. WELCH,

Defendant.

No. 99139

HONORABLE JAMES H. WALSWORTH, JUDGE PRESIDING

REPORTER'S TRANSCRIPT

March 28, 1974

APPEARANCES OF COUNSEL:

For the Plaintiff: WILLIAM J. McVITTIE
Attorney at Law
12616 Central Avenue
Chino, California 91710

For the Defendant: ALAN CURTIS
Attorney at Law
615 Civic Center Drive West
Santa Ana, California 92701

JANET R. HIIVA, C.S.R.
Official Court Reporter

SANTA ANA, CALIFORNIA - THURSDAY, MARCH 28, 1974

THE COURT: Welch matter. Counsel identify themselves for the record, please.

MR. McVITTIE: William McVittie appearing together with the petitioner. She's the plaintiff in the Complaint to recognize the judgment of dissolution relative to her marriage; and she's the responding party in connection with the motion, which is also before the Court.

THE COURT: Thank you.

MR. CURTIS: Alan Curtis appearing for the moving party on the notice of motion to vacate judgment.

Preliminarily, your Honor, we discussed this matter with Judge Banyard earlier this morning and were sent out. It was my understanding we were coming out on a notice of motion to vacate the judgment, which would serve to quash the writ of execution.

I've just been brought into this case and I'm not prepared to go to trial at this time on the Complaint, which is contending the reestablishment of a judgment, and I'd request a continuance on that part of it.

MR. McVITTIE: Well, your Honor, I would submit that, first of all, counsel was retained at least a week ago when he first called me. He's done extensive research on the matter, and the only issues to be presented in connection with the Complaint is whether or not the sums are due, and I

believe it will be done by testimony. So I don't believe there's any extensive preparation that counsel would have to do in connection with that matter.

Likewise, we announced ready on both matters. Counsel has previously said -- at least I understood that he would respond to both matters, and I would think that for the administration of the Court, both matters should be resolved at the same time since they arise out of the same set of facts and involve the same sums. One deals with a writ; the other is a judgment for the same dollars.

THE COURT: I think it's all the same. Motion to continue is denied.

MR. CURTIS: Thank you, your Honor.

Proceeding on the motion to vacate judgment, we can handle that separately with permission of the Court.

THE COURT: Do you want to do it now or do you want to do it this afternoon?

MR. CURTIS: That matter would probably be better handled right now, your Honor. We'd like to submit it on the file, only bringing out certain points in the file to the Court's attention, which is the fact that an abstract of judgment was presented to the Court for issuance in 1971, and it was refused and returned by Judge Domenichini, stating therein that there should be a notice of motion -- or notice in opportunity to be heard given to the defendant before the abstract would issue.

Under Section 1008 of the Civil Code the parties are required to give notice of motions or orders that come after the final judgment in a matter to the parties so they have an opportunity to respond.

Following that request for the abstract, counsel used another code section and had a certified copy of the judgment issued and filed in Contra Costa County creating a lien on the property owned by Mr. Welch.

In 1972 he filed an affidavit and declarations with writ of execution, and that writ of execution was not issued; nor contained in that writ of execution was any indication that a previous request for an abstract had been denied or any statement of fact that a lien had been created on the property.

In November of 1973 another writ of execution was filed and was issued by Judge Flynn, which created the Sheriff's sale, which we are trying to stop at this time.

THE COURT: All right. Mr. McVittie, do you have anything to add?

MR. McVITTIE: Yes, I do, your Honor.

It's true that we did originally send all the documents down to the Court Clerk for filing and a letter was sent back from the Court relative to the abstract.

I thereafter had my associate, Kenneth Gluby, come down personally to the court to see what provision was required for a noticed hearing, since we found no statutory

theory for it, and he spoke to Judge Lloyd Blanpied in chambers on October 30, 1972.

The judge indicated there need be no abstract of judgment filed, that indeed there was a separate provision of the Code of Civil Procedure which created the same lien, and he cited Section 674.5 of the Code of Civil Procedure, which I will hand your Honor at this time.

So, thereafter we did file a recorded copy of the interlocutory judgment, together with a certified copy that is of the order re modification, and they created the lien.

There is no hearing required at any time under the provisions of that section, and they have the same force and effect as a lien. Likewise, relative to the writ of execution, when we submitted that, subsequently to the Court on November 13, 1972 there was a transmittal letter confirming the conversation between Mr. Gluby and Judge Blanpied.

I submit, your Honor, there is no question regarding the dollars due. The judgment was for child support. There's been no fraud demonstrated, no undue influence.

I would represent, and this is not testimony of course, but I could have my client testify, that Mr. Welch was put on notice on several occasions by

correspondence that there was a deficiency.

At this point in time we contend that the amount alleged is due and owing. There are additional sums, your Honor, but they are not set forth in the pleading. I suppose we'd have to file a new pleading to bring it totally up to date.

But at this point in time we request that the motion be denied and that the judgment issue for the arrearage.

Now, the reason I've had a separate Complaint on the arrearage is when each item gets 10 years old, then it's barred by the statute of limitations, so I need a judgment recognizing the total arrearages pled up through, I believe, oh, a year or so ago, whatever is set forth in the pleadings.

With that judgment the additional sums are still good for 10 years from the date of accrual.

Thank you.

THE COURT: Do you have anything further to add?

MR. CURTIS: Only that as to the Complaint to the judgment, your Honor, we are not in complete agreement with all of the payments as set forth therein, and we have another matter of a stipulation for a reduced amount for a certain period of time, which we have to establish, and I feel that counsel and I could probably work out the arithmetic.

THE COURT: Do you want to do that by declaration?

MR. CURTIS: Yes, sir.

THE COURT: Mr. McVittie?

MR. McVITTIE: I have no objection to that, but I'm suggesting if the Court resolve the judgment except as to minor amount to be set forch, right. There's a few payments off and -- we have no objection, but I would submit that the amount due is almost completely accurate.

THE COURT: Anything further?

MR. McVITTIE: We have nothing further.

MR. CURTIS: Your Honor, only as to the point of the two writs of execution that were issued -- or presented -- one in 1972 and one in 1973, my client feels that those were -- strike that, your Honor.

THE COURT: All right. Do you want any additional time to submit points and authorities on your position on the writ?

MR. CURTIS: Yes, your Honor, we'd like to have additional time.

THE COURT: All right. One week. Also, I'll take the issue of the judgment under submission until that time so you can get your arithmetic worked out.

MR. McVITTIE: I see, your Honor. We'll agree on the amount, and then I assume I'd have a week to reply to any points and authorities.

THE COURT: If the Court requests it of you.

MR. McVITTIE: If the Court requests it, fine.

THE COURT: Thank you.

(Adjournment.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, JANET R. HIIVA, C.S.R., do hereby certify that the within and foregoing transcript, consisting of 8 pages of typewriting, is a full, true and correct transcript of my shorthand notes thereof, and a full, true and correct statement of the testimony and proceedings had in said cause.

J. R. Hiiva CSR
Official Court Reporter

DATED: 9-20-74

CLERK'S CERTIFICATE

Notice of completion of the Reporter's Transcript on Appeal of the within action having been delivered to the attorneys representing the Appellant and the Respondent, and no request for correction of said transcript on appeal having been filed, and the time for said filing having expired: Pursuant to Rule 8(a) of the Rules on Appeal, I HEREBY CERTIFY the foregoing record to be a full, true and correct transcript on appeal. DATED this ____ day of _____, 19____.

W. E. ST. JOHN, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Orange.

By_____ Deputy

JUDGE'S CERTIFICATE

I HEREBY CERTIFY that all requests for corrections of the foregoing Reporter's Transcript have been heard and determined and corrected in accordance therewith, and the same is certified as correct. DATED this _____ day of _____, 19____.

JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE BY MAIL

I, TERRY FLORES, the undersigned, say:

I am a citizen of the United States, over 18 years of age, employed by McVittie, Gutierrez & Bidart, 12616 Central Avenue, Chino, California, in which city the within mentioned mailing occurred, and not a party to the cause or matter mentioned in the attached document.

I served the attached document by placing a copy thereof in an envelope, addressed to the office of the addressee, as follows:

United States Supreme Court
Washington, D.C. 20013
(40 copies)

Clerk's Office
Orange County Superior Court
700 Civic Center Drive, West
Santa Ana, California 92701
(one copy)

Court of Appeal,
Fourth District
Division Two
State Bldg., Rm. 640
San Bernardino, Calif. 92401
(one copy)

Mitchell A. Stevens, Esq.
Sherbourne, Kennett &
Stevens, Inc.
620 Contra Costa Blvd.
Pleasant Hill, Calif. 94523
(three copies)

Each envelope so addressed was then sealed and postage thereon fully prepaid, and on July __, 1976, deposited in the United States mail at Chino, California, County of San Bernardino.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July __, 1976, at Chino, California.

Terry Flores

TERRY FLORES